

Vinay Kumar Vs. the Management, the Birla Cotton Spinning and Weaving Mills Ltd.

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Court : Delhi

Decided On : May-14-1998

Reported in : 1998(47)DRJ424

Judge : K. Ramamoorthy, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11; [Industrial Disputes Act, 1947](#); Service Law

Appeal No. : CW. No. 1839 of 1996

Appellant : Vinay Kumar

Respondent : The Management, the Birla Cotton Spinning and Weaving Mills Ltd.

Advocate for Def. : B.R. Sabharwal, Adv.

Advocate for Pet/Ap. : Pankaj Bala Varma, Adv

Judgement :

K. Ramamoorthy, J.

1. The writ petitioner has challenged the award of the Labour Court adjudicating the reference made by the Delhi Administration. The dispute between the

petitioner and the workman is regarding employment.

2. The case of the petitioner was that he was always ready and willing to work and when he reported for duty he was not given employment and, therefore, he complained of non-employment by the employer. The case of the Management was that it was always giving him work. The petitioner was not willing to work and he was given particular work and he was not willing to do as well as he was not trained to do the particular work and, therefore, he absented himself.

3. The Management also took another plea before the Labour Court that the petitioner instituted a suit for injunction with reference to the same cause of action and that suit was dismissed and, therefore, the petitioner cannot agitate the matter before the labour court. A plea was taken before the Labour Court that the reference itself was not competent in view of the petitioner having approached the Civil Court.

4. After the reference, the Labour Court framed following three issues for consideration:-

1. Whether reference is incompetent in view of the preliminary objections raised in para 1 to 3 of the W/S? If so, its effect?

2. Whether the workman absented from duty as alleged in the W/S? If so, its effect.

3. As in terms of reference.

5. The Labour Court on Issue No.1 found that the petitioner availed of civil remedy and, therefore, the reference was not competent.

6. On Issue No.2, the Labour Court found that the workman absented himself from duty and on these findings the Labour Court had given award holding that there is no illegality or unjustifiability in the action of the Management and consequently, the workman was not entitled to any relief.

7. The learned counsel for the petitioner submitted that the Labour Court had not considered the relevant principles. No doubt, the workman approached the Civil

Court but the Civil Court dismissed the suit on the ground that it was not maintainable in view of the specific bar under the [Industrial Disputes Act, 1947](#) and also the judgments rendered by various High Courts and Supreme Court holding that in respect of the industrial disputes, the Civil Court has no jurisdiction.

8. On the merits, the learned counsel for the petitioner contended that the Labour Court had completely ignored the evidence on record. On a reading of the evidence, the conclusion was irresistible that the complaint of the petitioner of non-employment was fully justified and the Management with ulterior motive refused to give the petitioner employment. According to the learned counsel for the petitioner, there is absolutely nothing on record on the basis of which any authority properly trained in law could come to the conclusion which the Labour Court has reached.

9. The learned counsel for the Management contended seeking to sustain the award of the Labour Court on the ground that after considering the evidence adduced, the Labour Court had given the finding on the question of fact and it is well settled from the decisions of the Supreme Court that this Court sitting under Article 226 of the Constitution cannot interfere with the finding or the question of fact given by the Labour Court.

10. The only point that was to be considered by the Labour Court on the merits, apart from the validity of the reference, was: Whether non-employment was justified?

11. I have gone through the evidence and the pleadings and there is absolutely nothing on record to show that the Management was justified in refusing employment to the petitioner. The Labour Court, without having the hang of the principles, had assumed that on the basis of the evidence, the position is clear that the petitioner absented himself from duty. The finding given by the Labour Court is absolutely perverse. The Labour Court had absolutely not kept in mind the various decisions of the Supreme Court and the principles laid down therein in approaching the facts of this case. It is well settled, assuming the stand of the Management is correct that the petitioner absented himself from duty, the Management had not taken disciplinary proceedings against the petitioner and having failed to do that, the Management cannot, in a case like this, seek to

sustain the evidence adduced before the Labour Court. The Management had failed to act in accordance with law and, therefore, the finding rendered by the Labour Court on Issue No.2 cannot at all be sustained.

12. With reference to the question of the reference being incompetent, the view of the Labour Court is absolutely unsustainable. The Civil Court had dismissed the suit of the petitioner only on the ground that it was not competent and, therefore, whatever that has been said by the Civil Court j would be of no legal effect because it is well settled right from the decision of the (Supreme Court in 'The State of Orissa v. Madan Gopal Runta' 1952 SC 12 that a Court would be acting without jurisdiction if the Court goes on to give any finding on the facts after holding that the Court had no jurisdiction on the subject matter. Consequently, the decision of the Labour Court is contrary to law and, therefore, it is liable to be set aside. Accordingly, it is set aside.

13 The petitioner shall be entitled to reinstatement with all consequential benefits.

14. The writ petition stands disposed of.

15. There shall be no orders as to costs.

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